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Operational Law, Special Operations, and Reserve Support

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I. Operational Law—A New Concept

Operational law consists of those laws, regulations, and policies affecting military operations. The increased significance of operational law can be attributed to a combination of factors affecting contemporary military operations: increasing restrictions on military activities, greater visibility of military operations through an aggressive media, the negative political impact associated with violations of law or policy, and the sensitive nature of special operations.¹

¹The current Joint Chiefs of Staff definition of special operations is as follows:

Operations conducted by specially trained, equipped, and organized DOD forces against strategic or tactical targets in pursuit of national military, political, economic, or psychological objectives. These operations may be conducted during periods of peace or hostilities. They may support conventional operations, or they may be prosecuted independently when use of conventional forces is either inappropriate or infeasible. Sensitive peacetime operations, except for training, are normally authorized by the NCA and conducted under the direction of the NCA or designated commander.

JCS Pub. 1, Dictionary of Military and Associated Terms, pg. 339 (1 Apr. 1984). Special operations may include un-

The focus of operational law is on the legal and political implications of military operations. Inasmuch as U.S. military operations are an extension of the political process, the political consequences of military operations can determine their success or failure.

Operational law is a rather new term in military parlance. However, the concept of involving attorneys in operational matters is not new to the legal profession. Civilian corporate counsel traditionally have been principal staff advisors to chief executives. In our highly regulated society, legal advice on operational matters often has been the difference between profit and loss or "life and death" for business. The fact that many corporate chief executives are former general counsel attests to their significance.

Unlike their civilian counterparts, commanders and their staff judge advocates (SJA) have traditionally avoided mixing lawyers and operations, except at the highest levels of command. As a result, the SJA has usually been conspicuously absent when the commander and his or her principal (coordinating) staff officers discuss operational matters.

The accolade "judge" is descriptive of the commander's traditional image of the SJA. As a member of a profession within a profession (much like the staff surgeon) the SJA is a special staff officer who can eliminate disciplinary problems which would otherwise interfere with

conventional warfare, direct action missions, collective security, psychological operations, and civil affairs measures.

military operations. Legal problems of the command have traditionally been viewed much like its medical problems, *i.e.*, problems that can be segregated from military operations and dealt with by the appropriate specialist. Seldom have commanders viewed the SJA as a staff asset comparable to their principal staff officers in operational matters.

Contemporary military operations have precipitated a changing role for the SJA. Commanders have learned that legal and political issues are endemic to contemporary military operations and must be dealt with as such. Especially in low intensity conflict situations, legal and political advice may be more critical to mission success than conventional military staff assistance.

In the politically sensitive environments in which military commanders must now function, every military move can be observed by a media served by instant satellite communication. The same modern means of communication that are so helpful on the battlefield can be unmerciful back home. Under these unforgiving conditions, commanders must have access to competent legal and political advisors to avoid potentially disastrous violations of law and policy.

Last year, a senior U.S. Army officer was interviewed in Central America, the interview was carried that evening on a network news broadcast. The newsman asked about the officer's weapon, an M-16, knowing that U.S. policy then in effect restricted weapons to personal sidearms. The incident, although minor, caused some embarrassment to the Adminis-

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tration, and considerably more than embarrassment to the officer. In a politically sensitive area, a minor legal infraction can thus assume significant proportions.

In the past, a commander could violate a law or two with impunity, so long as the battle was won. Today, a thoughtless violation of law or policy can turn an otherwise successful operation into a media event. Because commanders want to avoid unscheduled appearances on the nightly news, a competent SJA involved in the planning and conduct of operations is a good preventive measure.

At the highest military level of command, the Department of Defense (DOD) has recognized the importance of operational law. In a 1983 memorandum implementing the DOD Law of War Program, the Joint Chiefs of Staff mandated legal assistance in the planning and conduct of operations.² Commenting on the Joint Chiefs' memorandum, the International Affairs Division of the Office of The Judge Advocate General noted significant changes in the role of the SJA and the commander and indicated that

² a. Conduct of Operations: Legal advisors (the terms "judge advocate" and "legal advisor" are considered to be synonymous) should be immediately available to provide advice concerning the Law of Armed Conflict (LOAC) compliance during joint and combined operations. Such advice on LOAC compliance shall be provided in the context of the broader relationships of international and U.S. and allied domestic law to military operations and, among other matters, shall address not only legal restraints upon operations, but also legal rights to employ force.

b. Planning for Operations and Exercises: Legal advisors should attend planning conferences for joint and combined operations and exercises when rules of engagement and related topics will be discussed. Where appropriate, specific LOAC scenarios or interest items should be included in joint exercises to evaluate compliance with, reporting alleged violations of, and responses to confirmed violations of the law. Legal advisors are encouraged to consult periodically with their allied counterparts about the law of armed conflict in conjunction with combined operations and exercises. Mobilization planning shall include provision for sufficient numbers of legal advisors to support each commander's missions. Memorandum, Joint Chiefs of Staff 59-83, 1 Jun. 1983, subject: Implementation of the DOD Law of War Program.

planning was underway to provide international law specialists for major commands.³

The Department of the Army (DA), in Chief of Staff Regulation 11-2, states that The Judge Advocate General is responsible for "providing appropriate overall legal advice and guidance in connection with the Army implementation of the DOD Law of War Program."⁴ While the regulation lists as references DOD directives, Army regulations and publications, as well as those treaties relating to the law of war, the regulation does not describe the staff responsibilities of the SJA to the commander in operational matters, other than reiterating that the SJA is responsible for providing thorough guidance on the laws of war to all members of the command and reporting any violations thereof.⁵

Officers in the Command and General Staff Course may have noticed a subtle change in the SJA's staff responsibilities. Their current text, Staff Organization and Operations, contains a new paragraph expanding the responsibilities of the SJA to require a review of operation plans and orders for legal compliance.⁶

³Judge advocate participation in the operation planning process has increased substantially over the past decade. Although much of the impetus behind this increase derives from DOD Directive 5100.77, DOD Law of War Program (10 July 1979), expansion has not been limited to law of war issues, but also covers the entire spectrum of domestic and international law issues which may affect military operations planning. As judge advocates are called upon to respond to operational questions, awareness of the law affecting military operations increases and further increases the degree to which such advice is sought. It is anticipated that this will evolve to the point where specialization in international affairs will be of great importance to staff judge advocates of major commands. The International Law Division, Office of The Judge Advocate General is developing a recommended program to anticipate and meet further requirements. Memorandum, DAJA-1A, 20 June 1983; subj: MJCS 59-83.

⁴Dep't of Army, Chief of Staff Reg. No. 11-2, Implementation of DOD Law of War Program, para. 4d(4) (7 May 1975) [hereinafter cited as CSR 11-2].

⁵CSR 11-2, para. 4d.

⁶"The SJA reviews operation plans and orders to insure compliance with the Law of Armed Conflict, provides legal advice on the Law of Armed Conflict training and observes and evaluates the effectiveness of this training." Command & General Staff School Text No. RB 101-5, para 3-45r (May 1983).

In October 1984, The Judge Advocate General's School, Army (TJAGSA) published the Operational Law Handbook for the Deploying Judge Advocate.⁷ The Handbook describes the operational law responsibilities of the SJA in a checklist format and is organized under familiar functional areas (international law, claims, contracts, *etc.*). The Handbook illustrates the significance of the SJA's operational support role and is essential for the SJA who is not familiar with the many facets of operational law.

The current Standing Operating Procedure (SOP) of the office of the Staff Judge Advocate, 1st Special Operations Command (Airborne), Ft. Bragg, reflects these doctrinal changes. Paragraph 6 of the SOP explicitly describes the staff responsibilities of the special forces group judge advocate (group attorney) in connection with group operations.⁸ This working document is attached as an Appendix and will be discussed more fully in Section III of this article.

Thus, throughout the chain of command there appears to be an acceptance of a new role for the SJA in operational matters. The most important factor in the development of this new role is the changing relationship between the commander and his or her lawyer.

II. Gaining the Commander's Confidence

No attorney can properly serve a client without a relationship of trust and confidence. To establish that relationship, an SJA must demonstrate that he or she not only understands the applicable law but also understands operations as well as the principal (coordinating) staff officers. If the SJA is not perceived by the commander to be an operational asset, he or

she will not be taken into the commander's confidence and will be of little use in operational matters.

Because of a traditional emphasis on military justice, few judge advocates have any real training or experience in operational matters. While this deficiency can be overcome with experience, it can make it difficult for the SJA to establish the necessary relationship of trust and confidence with the commander in operational matters.

There has been, however, a discernible change in JAGC career management policy. Today, junior judge advocates are able to receive resident training in command operations at schools such as the U.S. Army John F. Kennedy Special Warfare Center at Ft. Bragg, North Carolina. Such resident training in special operations, not available to judge advocates until recently, helps the young JAGC officer establish valuable credibility with the commander.

The Special Warfare Center is just one of many excellent training facilities of the U.S. Army Training and Doctrine Command (TRADOC). Additionally, the Command and General Staff College at Ft. Leavenworth, Kansas, the numerous branch schools and U.S. Army Reserve schools, and TJAGSA can provide the doctrine and training necessary to help both military lawyers and their commanders better understand the increased significance of legal and political issues in contemporary military operations.

The Operational Law Handbook for the Deploying Judge Advocate recently published by TJAGSA has helped translate new operational law concepts into specific tasks for the SJA. In addition, TJAGSA has also developed new courses of resident instruction to help the military lawyer better understand his or her operational law responsibilities.⁹

⁷The Operational Law Handbook for the Deploying Judge Advocate was distributed to the attendees of the 1984 Worldwide JAG Conference, each state National Guard adjutant general or senior officer, and selected Military Law Centers and Reserve units. The Handbook is available through the Defense Technical Information Center to user libraries; the ordering number is listed in the Current Material of Interest section in this issue.

⁸Reprinted in *infra* Appendix to this article.

⁹See The Judge Advocate General's School, Army, Annual Bulletin 1984-1985, at 54-55.

With the development of doctrine and training opportunities for military lawyers and their commanders in operational law, the SJA can be expected to become more fully integrated into the planning and conduct of operations, as contemplated by DOD.

III. Operational Law and Special Operations

If operational law is important to conventional operations, it can be critical to special operations¹⁰ because special operations generally involve more significant legal and political implications than conventional operations. Special operations forces (SOF) are organized under the 1st Special Operations Command (Airborne) (1st SOCOM(A)) headquartered at Ft. Bragg, N.C., and include special forces, rangers, and psychological and civil affairs units. These highly trained, specialized units are, *inter alia*, prepared to engage in low intensity conflict operations in which legal and political considerations frequently outweigh conventional military considerations.¹¹ For example, special forces unconventional warfare missions may include subversion and sabotage. How, when, where, and by whom such operations are conducted may have significant legal and political implications.

Foreign internal defense operations are perhaps the best example of contemporary military operations conducted by SOF in which political objectives outweigh military objectives.¹² Current doctrine recognizes the significance of the legal aspects of foreign internal defense operations,¹³ and it will be further discussed below.

¹⁰See generally 1st SOCOM(A), Interim Operational Concept for Special Operations Forces, (19 Nov. 82).

¹¹See Dep't of Army, Field Manual No. 100-20, Low Intensity Conflict, (Jan. 1981) [hereinafter cited as FM 100-20]; U.S. Army John F. Kennedy Special Warfare Center School Text No. 41-10-3, U.S. Army Civil Affairs Legal Functions (Jan. 1983) [hereinafter cited as ST 41-10-3].

¹²"Foreign internal defense" is a type of low intensity conflict operation, and may be used interchangeably with Internal Defense and Development, nation-building, civic action, and stability operations. See FM 100-20, chapters 4-6; ST 41-10-3, pgs. 3-37, 3-38.

¹³FM 100-20, chapter 6, pgs. 123-24; ST 41-10-3, pgs. 3-33 through 3-38; *infra* Appendix.

As a result of the political sensitivity of unconventional warfare, foreign internal defense operations, and other special operations, operational law is critical to mission success. If the SJA advising the SOF commander does not thoroughly understand these operations and applicable law, he or she will be of limited value to the commander, and, in special operations, a violation of law or national policy can compromise a mission. The SOP of the 1st SOCOM(A) SJA illustrates the significance of the military lawyer in special operations. The excerpt set out in the Appendix to this article is the section on legal involvement in operations. It states, as a matter of policy, that "the Group Attorney must be deeply involved in operational matters to insure that missions are legally conceived and executed."¹⁴ The operational law procedures for the group judge advocate of the 1st SOCOM(A) obviously require a military lawyer with special qualifications.¹⁵

The sensitivity of special operations can be appreciated against the backdrop of the 1973 War Powers Resolution.¹⁶ The Resolution requires the President, as Commander-in-Chief, to consult with Congress before U.S. armed forces are introduced into hostilities, or "where imminent involvement in hostilities is clearly indicated by the circumstances. . . ."¹⁷ To avoid transforming low visibility operations in-

¹⁴*Infra* Appendix, para. 6b(1).

¹⁵Suggested Qualifications of the Military Lawyer in Support of Special Operations:

1. Training in special operations, as required (*i.e.*, Special Forces, Ranger, PSYOP, CA).
2. Understanding the applicable U.S. laws and foreign policy and their objectives in the operational area, including laws and policies regulating funding and expenditures.
3. Working knowledge of international law, with specific application to special operations in the operational area.
4. Working knowledge of local laws and customs applicable in the operational area.
5. Adequate language capability and academic background for operational area (preferably Foreign Area Officer qualification).
6. Proper security clearance for all special operations plans/operations.
7. Adequate JAGC experience and maturity (field grade).

¹⁶50 U.S.C. §§ 1541-1548 (1982).

¹⁷50 U.S.C. § 1542 (1982).

to high visibility political issues, low intensity conflict operations are designed to avoid being characterized as "hostilities" whenever possible.

Foreign internal defense operations are low intensity conflict operations which normally would not be considered "hostilities" as defined in the War Powers Resolution.¹⁸ Any foreign internal defense operational activities that might trigger the War Powers Resolution could compromise the success of the mission. Carefully drafted rules of engagement and competent legal and political staff support in these operations can minimize such risks.

Unfortunately, there has not always been adequate legal support available to the SOF commander in the field. Lower level SOF commands may not have a judge advocate because legal support traditionally has been based on the legal/administrative needs of the unit, a factor of unit size, rather than unit mission. It is the sensitive nature of the special operations mission, not the size of the SOF unit, that requires special legal staff support.

Until recently, there was no judge advocate assigned to each active SF group. Today, as evidenced by the SOP at the Appendix, there is adequate legal support at the SF group level of command. However, because units below brigade or group level normally do not have an organic judge advocate and may conduct independent operations, command decisions with significant legal implications may be made without the benefit of competent legal advice. In light of new operational law requirements, staff legal support should be re-evaluated based on a unit's mission, rather than its size. For the present, the lack of organic legal support can be remedied by attaching a qualified judge advocate where needed. For SOF units, the recently enlarged Office of the Staff Judge Advocate, 1st SOCOM(A), is currently meeting the legal support requirements of the 1st SOCOM(A) subordinate commands.

¹⁸See FM 100-20, chapters 4, 5, and 6; ST 41-10-3, pgs. 3-33 through 3-38.

Even with an SJA or judge advocate on the staff of an SOF unit, training in special operations and the laws and policies applicable to such operations is essential if the military lawyer is to be of value to the commander.¹⁹ The emphasis in operational law support for special operations must be on advising the commander on sensitive legal and political operational problems, rather than providing traditional legal/administrative services. Because compliance with applicable laws and policy can be critical to the accomplishment of the political objectives of special operations, competent legal advice to the commander can be as essential as that of the other principal (coordinating) staff officers. Also, while operational law support can be critical for special operations, the same principles are applicable to conventional operations.

IV. Operational Law Support in Reserve

The operational law procedures set forth in the Appendix require coordination of judge advocate activities with other related support activities, including any civil affairs assets supporting the command.²⁰ The civil affairs legal team is one of those assets, and it can provide operational law support in a command support role. Specifically, a civil affairs legal team can provide support through the command's SJA and/or G-5, supporting the commander's politico-military mission as needed, with emphasis on the impact of operations on civilians.²¹ Currently, all civil affairs legal teams are Reserve component units.

The operational law role of the civil affairs legal team complements that of the SJA. The

¹⁹See *supra* notes 13 and 15.

²⁰Civil affairs units are part of SOF.

²¹The legal functional area of civil affairs is described in Dep't of Army, Field Manual No. 41-10, *Civil Affairs Operation* (18 Nov. 1966), as follows: "Legal. This function is concerned with the legal systems of the area and the application of international law in civil affairs operations. Specific tasks in coordination with the SJA may include . . . a. Supporting the work of the unit judge advocate." See also ST 41-10-3, pgs. 3-18 through 3-20, 3-33 through 3-38, and 4-1 through 4-3.

SJA has primary responsibility for advising the commander on operational matters internal to the command,²² while the civil affairs legal team is responsible for matters external to the command, such as relations with the civilians and civil authorities in the operational area.²³ The Appendix illustrates that operational law policy and procedure includes matters both internal and external to the command. This requires a close working relationship between the civil affairs legal team and the SJA of the supported command to insure coordinated legal support.

While the civil affairs legal team can provide operational law support, it is no substitute for the SJA because the operational law role of the SJA extends to internal operational matters such as developed rules of engagement and reviewing operations for legal compliance.²⁴ Even if attached directly to the supported unit for a particular operation, the civil affairs legal team is not designed to provide the commander with a full range of legal support. Unlike an organic SJA who maintains a continuing lawyer-client relationship with the commander, the civil affairs legal team provides specialized legal support to a command on an "as needed" basis.

It should be noted that civil affairs units, including civil affairs legal teams, may support conventional units as well as special operations units. The recent intervention in Grenada (Operation Urgent Fury) involved civil affairs and other special operations units in support of conventional units, even though Urgent Fury was not considered a special operation. However, operational law principles are as applicable in conventional operations as they are in special operations.

Operation Urgent Fury illustrated the need for legal and political staff support in contemporary military operations. It also demonstrated the need for the highly trained specialists found in Reserve component units to sup-

port active component units. In recent remarks made to the Army Section of the Reserve Officers Association of the United States, the Honorable Delbert L. Spurlock, Assistant Secretary of the Army (Manpower and Reserve Affairs), characterized the Grenada operation as a "classic case" illustrating the need for Reserve component civil affairs units to provide essential support to active component units on short notice.²⁵

After brief hostilities, military operations in Grenada evolved into government support operations with legal and political objectives superseding military objectives. Representatives of the SJA, XVIII Airborne Corps, and the SJA, 82d Airborne Division, together with Reserve component elements of the 358th Civil Affairs Brigade, augmenting the 96th Civil Affairs Battalion, provided essential support services to the civil-military operations in Grenada.

Even after most U.S. forces left Grenada, civil affairs elements remained in a government support role. Currently, elements of the 360th Civil Affairs Brigade are involved in civic action operations on Grenada, working closely with other U.S. military forces and the Agency for International Development. One of the projects of the brigade is supervising the rehabilitation of public school facilities on Grenada.²⁶ These non-combat civil affairs operations were, and continue to be, a significant factor in the success of our activities in Grenada.

Current operations in Central America also illustrate the need for operational law support in special operations. The much-publicized mining of Nicaraguan waters showed the sensitivity of military operations in Central America. Against the backdrop of the War Powers Resolution, unconventional warfare or foreign internal defense operations offer great potential for negative political repercussions. As a result, legal and political staff support for the SOF

²²See *supra* note 3.

²³See Preface to ST 41-10-3.

²⁴See procedures *infra* Appendix.

²⁵Spurlock, *Grenada Provides Classic Case*, The Officer, Aug. 1984, at 17.

²⁶Edgar, *South Carolinians Helping to Rebuild Grenada*, The State (Columbia, South Carolina), Sept. 30, 1984, at 3B.

commander is essential to mission success. While the Office of the SJA, 1st SOCOM(A), has been expanded to provide such operational law support, there has been no effort to provide specialized Reserve component legal support for special operations. In fact, there are currently no Reserve component JAGC personnel, other than civil affairs legal team members, oriented to operational law support.

There are several alternatives for providing Reserve component operational law support. Civil affairs legal teams²⁷ are Reserve assets that can provide civil affairs legal support to any command, but such support is for external operational matters.²⁸ The civil affairs legal team is designed to supplement, not replace, the organic SJA.²⁹ In addition to civil affairs legal teams, specialized Judge Advocate General Service Organization (JAGSO) teams can also provide specialized legal support when and where needed.³⁰ There are five types of JAGSO teams: (1) international law (to include claims in March 1985); (2) court-martial, trial; (3) court-martial, defense; (4) legal service; and (5) contract law.

While the concept of the JAGSO team is well suited to provide Reserve component legal support for active component units, there is no existing team tailored to provide operational law support. As operational law has been recognized as a new functional area by DOD,³¹ and already incorporated into the SOP of active units,³² JAGSO teams capable of providing operational law support are needed to complement active component operational law support.

Special JAGSO teams responsible for providing operational law support could come from already designated international law JAGSO teams or civil affairs legal teams whose members are also trained in operational law. These teams could provide operational law support as needed to active component commands, *e.g.*, 1st SOCOM(A), through a Capstone affiliation³³ and/or a mutual support relationship.³⁴ As the majority of the Army's legal structure is filled by Reserve component judge advocate personnel,³⁵ the development of Reserve component operational law support is clearly needed.

V. Summary

Today's commander must deal with ever increasing laws, regulations, and policies affecting military operations, as well as the prospect of public exposure through an aggressive media. There is little margin for error, especially in politically sensitive operations. The need for operational law support is obvious.

DOD has recognized the need to involve military lawyers in conducting and planning operations at the joint and combined command level. This represents a significant change in the traditional role of the SJA by mandating operational law support at the major command level. The same rationale justifies operational law support for lower level commanders involved in sensitive operations.

The nature of special operations and the politically sensitive environment in which it is conducted require specialized operational law support at command levels lower than required in conventional operations. To function effectively, the military lawyer assigned in support of special operations must have a thorough understanding of special operations and applicable laws.

²⁷The different organizational structures of civil affairs legal teams are set forth in ST 40-10-3, pgs. 3-17, 3-18.

²⁸See *supra* note 23.

²⁹ST 41-10-3, pgs. 4-1, 4-2.

³⁰See Dep't of Army, Reg. No. 27-4, Judge Advocate General Service Organization (1 Jan. 1981).

³¹See *supra* note 3.

³²See *infra* Appendix.

³³See Dep't of Army, Reg. No. 11-30, Capstone (1 Sep. 83).

³⁴See Dep't of Army, Reg. No. 11-22, Mutual Support and Equipment Sharing Program (15 Aug. 82).

³⁵According to statistics maintained by the Reserve Affairs Department, TJAGSA, the JAGC is currently composed of 46% USAR personnel, 43% active duty personnel, and 11% ARNG personnel.

The current structure of Reserve component JAGC units (civil affairs legal teams and JAGSO teams) does not provide for operational law support. The development of JAGSO teams capable of providing operational law support, with one or more teams capable of supporting special operations, would complement the current development of active component operational law support.

As long as politically sensitive military operations remain an integral part of our national

defense strategy, we must insure that our commanders have adequate legal staff support to accomplish their assigned missions. This means providing commanders with the operational law support essential to mission success. To accomplish this objective, DA should provide its commanders and judge advocates with adequate doctrinal guidance and training in operational law to enable them to fulfill their new responsibilities.

Appendix

Excerpt from the SOP of the OSJA, 1st SOCOM(A)

6. OPERATIONS—Legal Involvement

a. References:

- (1) AR 381-10, Executive Order 12036, Intelligence Oversight.
- (2) 10 USC 154-5, Anti-Deficiency Act.
- (3) Executive Order 12333, Prohibition against Assassination.
- (4) 22 USC 2151-2429, Foreign Assistance Act.
- (5) 22 USC 2751-2794, Arms Export Control Act.
- (6) 22 USC 441-465, Neutrality Act.

b. General Policies:

(1) The only way to insure the legal sufficiency of the Group operations is to insure that a legal review of the operation is performed at the local level. The Group will not perform patently illegal missions or conduct itself in a manner which violates domestic or international law. Therefore, the Group Attorney must be deeply involved in operational matters to insure that missions are legally conceived and executed.

(2) U.S. forces will be governed by the Law of War, as defined by the Geneva and Hague Conventions. Commanders will exert every effort to insure that persons subject to their authority are aware of the limitations and standards imposed by international law and that their personnel adhere to such requirements.

c. Procedures:

(1) The Group Attorney will advise the S-3 on all foreign training and security assistance matters in order to insure that the legal implications on the use of funds, with particular regard to the Foreign Assistance Act and the Arms Export Control Act, have been complied with.

(2) The Group Attorney will review annexes prepared within the Group for all operational plans to insure compliance with the Law of War, applicable treaties, and domestic law. In addition, the Group Legal Section will draft legal annexes to the Group OPLAN.

(3) The Group Attorney will advise the Group Commander on intelligence oversight matters in accordance with the provisions of AR 381-10, insuring that . . . reporting requirements are met, and that all concerned are aware of the legal implications for non-compliance.

(4) The Group Attorney will be part of the Group Targeting Committee and advise on the Law of War implications of hitting specific targets. . . . Rules of engagement will include targeting limitations dictated by protected locations and protected persons, under the Law of War.

(5) The Group S-2 will identify Essential Elements of Information (EEI) and generate Re-

quests for Information (RFIs) which include protected places under the Law of War, after consultation with the Group Attorney.

(6) The Group S-3, the Group Attorney, and all Commanders will identify potential Law of War violations and report them using a Serious Incident Report format, through command, Provost Marshall and JAG channels. Alternative channels include IG, chaplain and JAG channels, for confidential reporting. Violations by allied personnel or personnel accompanying U.S. Forces or enemy forces will be reported with the same urgency in the same manner.

(7) The Group Attorney will coordinate with the S-1 to insure all PWs and detainees are properly taken care of. Civilian detainees and the local populace of foreign countries will be treated by U.S. Forces in accordance with applicable international law and the Hague and Geneva Conventions contained in General Reference (6). Enemy prisoners of war (EPW) in U.S. custody, will be treated in accordance with Chapter 3, FM 27-10. Where the status of the aforementioned personnel is uncertain, the Group Attorney will arrange for or assist in the conduct of Article 5 tribunals pursuant to the Geneva Conventions. (See FM 27-10, paragraph 71).

(8) The Group Attorney will advise the Commander on the status of forces, mutual defense treaties, and other international agreements which have an impact on Group operations. Careful consideration should be given to cross-border operations, overflight rights, and neutral parties/states to any international conflict.

(9) Jurisdiction over non-U.S. personnel usually remains with the courts of the foreign country concerned IAW the Law of War and existing treaties and agreements. As soon as possible, the Group Attorney or attached Civil Affairs assets will coordinate with the component/supporting command responsible for that area. As soon as possible after such coordination, non-U.S. personnel detained by U.S. Forces for

suspected offenses against U.S. Forces will be delivered promptly to representatives of the foreign country concerned.

(10) Civil Affairs assets will be utilized when necessary to establish police, judicial and governmental authority within UWOAs and to establish coordination with foreign country authorities, if such augmentation is available. The Group Attorney will coordinate with the S-3 in requesting augmentation and coordinating with governmental units as necessary. Higher headquarters will be contacted before guerrilla movements are given any sort of provisional government status by U.S. Forces.

(11) All incidents which may result in judicial action by civil authorities in addition to or in lieu of military justice action should be immediately reported using Serious Incident formats.

(12) Rules of Engagement (ROE) will be submitted by the Group Attorney to the Group S-3 for inclusion as an appendix to the operations annex. The ROE will reflect the level of escalation authorized by the National Command Authority (NCA), unique special operation missions, and the prohibitions contained in the Geneva and Hague Conventions applicable to the area and mission defined in the OPLAN. However, since the ROE reflects National Policy, any deviations from the ROE provided by higher headquarters will be submitted for approval, through channels, to higher headquarters. ROEs will be briefed to all deploying teams, as well as included in the OPLAN. If no ROE was provided by higher headquarters, they will be drafted by the Group Attorney, in coordination with the Command Group and S-3, and submitted as part of the OPLAN to be reviewed by higher headquarters.

(13) The Group Attorney will advise the Group Commander and major subordinate commanders on the potential political implications of specific special operations missions and provide input concerning public statements about these operations.

Judiciary Notes

US Army Legal Services Agency

A general court-martial convening authority's adjutant forwarded to the Judiciary a personal letter from an accused's parents which the gcmca had not received until after he took action in the case. The letter set forth, in considerable detail, the accused's background and ended with a plea for leniency. The letter had been at the headquarters at least two months before it was forwarded to the Judiciary.

Although such letters are not forwarded to the Court of Military Review as part of the record, they are sent to appellate defense

counsel for appropriate use on the accused's behalf. Failing to forward these matters to the Judiciary in a timely manner not only puts the Army and the military justice system in a bad light, it could require further judicial proceedings not otherwise necessary. The sense of urgency that most staff judge advocates have imparted to their personnel concerning the handling of post-trial *ex parte* communications should also be imparted to the other headquarters and command personnel who may receive them directly.

Legal Assistance Items

Legal Assistance Branch, Administrative and Civil Law Division, TJAGSA

The Child Support Enforcement Amendments of 1984

On August 16, 1984, President Reagan signed into law a major child support bill, the Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984).

The law is important for legal assistance officers because it amends Title IV-D of the Social Security Act and requires states to adopt a number of procedures to improve the collection of child support, including mandatory income withholding. Military attorneys providing legal assistance often represent clients whose military pay is being subjected to an involuntary allotment under the involuntary allotment law which has been in effect since 1982.

Legal assistance officers should be familiar with the provisions of this new law because under it a lesser period of time is required (one month) for mandatory income withholding than is required under the involuntary allotment statute (two months or the equivalent of two months). The Amendments contain other substantive provisions which will affect military clients.

The following summary was prepared by Robert Horowitz and Diane Dodson of the American Bar Association Child Support Project and provided to the Legal Assistance Branch, Administrative and Civil Law Division, for dissemination:

States are mandated to legislate or otherwise establish the following procedures by October 1, 1985:

Mandatory Wage Withholding. States must enact laws requiring that all child support orders issued or modified in the state include provisions for withholding of wages. The actual withholding of wages would then be triggered when payments are one month in arrears or when an absent parent voluntarily requests withholding. A state may establish an earlier time for withholding to be triggered. The withholding must be administered by a public agency. The withholding procedures must be initiated automatically for all families already receiving IV-D services (both AFDC and non-AFDC) and also must be provided for other families applying for this particular service. Withholding must take place without need for amendment to the support order or any action

by the court or other agency issuing the order other than those specifically required by the Act. A public agency must be designated to receive and forward payments received from absent parents unless the state uses alternative collection methods which are also publicly accountable.

The obligor must receive notice of the proposed withholding and how to contest the withholding because of mistakes of fact or because arrearages are paid; however, the final decision on the matter must be issued within forty-five days of the date of notice of proposed withholding. Employers may aggregate all withheld support amounts to the state in one check and may not fine or discipline an employee because of child support withholding, even if other withholding orders already exist. Employers are liable for payment of any amounts they unlawfully fail to withhold. They may collect a fee for their assistance in withholding wages. Amounts to be withheld are current and past due amounts subject to Consumer Credit Protection Act limitations. The state must make provisions for withholding on interstate cases. There must be a provision for terminating withholding. Support collection must take priority over any other legal process under state law against the same wages.

Procedures to expedite establishment and enforcement of court orders. States must establish expedited procedures for obtaining and enforcing support orders and, at state option, for establishing paternity. These expedited proceedings may be held in either the judicial system or an administrative agency. The requirement may be waived for specific areas of the state if current procedures are timely and effective.

State income tax refund offsets. States with income taxes must provide for withholding past due support amounts from the obligor's tax refund in both AFDC and non-AFDC cases. Notice of the proposed offset and due process protections must be provided to the obligor.

Liens against property. States must establish procedures for imposing liens against both real and personal property for past due support

amounts owed by state residents or by non-residents who own property in the state.

Paternity statute of limitations. State paternity laws must permit establishment of paternity for all children up to at least age 18.

Imposition of security or bond. States must provide for imposition of security, bond, or other guarantee to secure payment of overdue support. The obligor is entitled to prior notice and an opportunity to contest the proposed security or bond, in compliance with state due process procedures.

Providing information on past-due support to credit agencies. States must make available to consumer credit agencies, for a fee, information regarding child support arrearages in excess of \$1,000 and may provide information on smaller amounts. The obligor must receive prior notice of the release of such information and an opportunity to contest the accuracy of such information.

The preceding are procedures which are technically required only for persons who are receiving services under a state's Title IV-D support enforcement plan. Of course, nothing precludes a state from making identical procedures available to parties representing themselves or represented by private counsel. The state agency representing support enforcement clients need not use state refund intercepts, liens, bonds or credit reporting when they are inappropriate based on such factors as the obligor's payment record and the availability of other remedies.

Continue child support enforcement services for families that lose AFDC eligibility. Those families whose eligibility for AFDC is terminated for any reason must be transferred to the state's non-AFDC IV-D enforcement program without requiring reapplication or payment of fees.

Tracking and monitoring support payments by public agency. States may establish procedures under which, at the request of either party, the state must provide for child support payments to be made through the state agency that administers the income withholding pro-

gram, whether or not there are arrearages and whether or not income withholding procedures have been applied. Federal reimbursement may be obtained for the administrative costs of this service. The requesting parent must be charged a \$25 annual fee or the actual costs, whichever is less.

Late payment fee. States may impose a late payment fee of 3 to 6 percent on overdue support payments, although this must not reduce the amount of payments going to the child either directly or indirectly.

Publicize the availability of child support enforcement services. States must publicize, through public service announcements and other means, the availability of child support enforcement services, the application fee for these services and a telephone number or address for obtaining these services.

Medical support. State IV-D agencies must seek medical support as part of any child support order whenever health care coverage is available to the non-custodial parent at a reasonable cost.

Continued Medicaid eligibility. Families who become ineligible for AFDC payments because of receipt of child support payments will continue to be eligible for Medicaid benefits for four months. (This provision is effective only until October 1, 1988).

Notification to AFDC recipients of support collected. States are required to notify each AFDC recipient, at least annually, of the amount of child support collected on behalf of that recipient.

The following must be established by October 1, 1987:

Child support guidelines. Each state must establish child support guidelines which must be made available to judges and other officials who determine child support awards, but the guidelines need not be binding. The guidelines may be established by legislation or by judicial or administrative action.

The bill covers several additional items:

Waiver of mandated procedures. The Sec-

retary may exempt a state from a particular requirement of the new procedures for a specified period if the state can demonstrate that the procedures would not increase the effectiveness and efficiency of the state's support enforcement program.

Ninety-percent match available for establishing wage withholding and payment tracking program in some cases. Provisions in the current law making ninety-percent Federal matching funds available for developing automated management systems will be changed to allow states to use these funds to implement and carry out the income withholding and monitoring provisions of this bill if the state has already met the requirements of the present law.

Modification of federal share of administrative costs of program. The federal share of the cost of the program is reduced to 68% for fiscal years 1988 and 1989 and to 66% for fiscal year 1990 and thereafter.

Incentive payments modified to also include incentive for non-AFDC collections. The bill would also change the federal incentive payments for the child support program. Where current law provides an incentive only for non-AFDC collections, this bill provides incentives for both non-AFDC and AFDC collections. All states will be entitled to receive incentive payments equal to six percent of their AFDC collections and six percent of their non-AFDC collections. Higher incentives may be paid for cost-effective programs. The maximum incentive for non-AFDC payments is equal to 100% of the AFDC incentive in FY 1986 and 1987, 105% in FY 1988, 110% in FY 1989 and 115% in FY 1990. For 1985 the AFDC incentive will be calculated without regard to the provisions of the Deficit Reduction Act of 1984. Where costs of child support operations are decentralized an appropriate share of the incentive payments must be passed through to the local level. Amounts collected in interstate cases will be credited to *both* initiating and responding states.

Special funds for interstate collections. Seven million dollars in FY 1985, \$12 million in FY 1986 and \$15 million in FY 1987 and thereafter

is authorized to be available to the Secretary of HHS to fund special projects using innovative techniques or procedures for child support collections in interstate cases.

Spousal support to be collected when child support also collected. States must collect spousal support when child support is also being collected so long as a support obligation is already established for the spouse and the child is living in the household of the parent entitled to spousal support.

Modification of child support reports. Provisions for annual state child support reports are modified.

Collection of child support for children in foster care. Children receiving foster care support through the federal IV-E foster care program must have their support rights assigned to the state and collected by the state IV-D agency.

Waiver of requirements under the program. Requirements of the Act may be waived if the intent of the waiver is to test modifications in the support program in order to improve it, the waiver would not disadvantage children needing support and the waiver would not result in an increase in federal AFDC costs. (A special provision is made for Wisconsin's experimental child support program.)

State commissions on child support. The governor of each state shall appoint a broad-based child support commission to study the functioning of the child support system with regard to securing support and parental involvement for all children, focusing specifically on: establishment of objective standards for support; enforcement of interstate obligations; visitation; the availability, cost, and effectiveness of services both for children who receive and who do not receive AFDC benefits; and additional federal or state legislation needed. Members of the commissions must include representatives of custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social service agencies and others. The commissions must issue their reports by October 1, 1985. No federal funds are available for the

commissions. States which already have objective standards or which have had a commission in the last five years need not establish a commission. The Secretary of HHS may also waive the commission requirement if the Secretary determines the state is making reasonable progress in improving its child support enforcement program.

Federal income tax refund intercept. The present system for withholding past due support from Federal tax refunds to non-custodial parents of children receiving AFDC benefits is extended to cover support for children not receiving AFDC benefits. The parent must be notified of the proposed offset and how to contest it. The non-custodial parent's spouse must also be notified of the steps to be taken to protect his or her share of the refund.

Application fee. States must charge an application fee for non-AFDC IV-D cases. The fee may not exceed \$25 and may vary to reflect ability to pay. The state may charge the custodial parent, pay the fee itself (without seeking federal reimbursement) or seek to recover the fee from the non-custodial parent.

For further information contact:

Diane Dodson/Robert Horowitz
Co-Directors
Child Support Project
National Legal Resource Center for Child
Advocacy and Protection
American Bar Association
1800 M Street, N.W., Suite S-200
Washington, D.C. 20036
(202) 331-2230

Uniformed Services Former Spouses' Protection Act Amendments

There has been much publicity recently on provisions contained in the Department of Defense Authorization Act of 1985, Pub. L. No. 98-525, signed into law by President Reagan on October 19, 1984. The Act amended the Uniformed Services Former Spouses' Protection Act, 10 U.S.C. § 1408 (1982) to expand medical, commissary and exchange privileges to former spouses not previously eligible for such benefits.

An article in a future edition of *The Army Lawyer* will analyze these amendments in detail. Many legal assistance offices are receiving inquiries about changes made by the amendments. Most of these inquiries relate to the eligibility of former spouses to receive military identification cards for medical, commissary and exchange privileges. Following is the text of a message issued by the Office of The Adjutant General. The date/time group is R261900Z Oct 84 and it was sent to all military personnel offices, identification card offices, retirement services offices, and staff judge advocate offices.

1. The following is provided for information only pending DOD implementation guidance to the seven uniformed services. Upon receipt of DOD guidance, AR 640-3 will be modified accordingly.

2. On 1 January 1985, several changes to the Uniformed Services Former Spouses' Protection Act will go into effect. Essentially, there will be three categories of former spouses.

A. The 20/20/20 former spouse: Minimum 20 year marriage, service member has minimum 20 years creditable service, and the marriage was concurrent with at least 20 years of creditable service. Date of divorce for the 20/20/20 former spouse is no longer a criteria. This category of former spouse is authorized commissary, post exchange and theater privileges. If the former spouse is not enrolled in an employer-sponsored health care plan, medical benefits may also be extended.

B. 20/20/15 former spouses divorced prior to 1 April 1985: Minimum 20 year marriage, service member has minimum of 20 years creditable service and the marriage was concurrent with at least 15 years of the creditable service. The 20/20/15 former spouse divorced prior to 1 April 1985 will be eligible for full military medical care benefits only if not enrolled in an employer-sponsored health care plan.

C. 20/20/15 former spouses divorced on or after 1 April 1985: Same as 2B except divorce occurred on or after 1 April 1985. The 20/20/15 former spouse divorced on or after 1 April 1985 will be entitled to two years of transitional care in the military medical system followed by the right to convert to a DOD contracted private health insurance plan. These entitlements are also conditional upon the former spouse not being enrolled in an employer-sponsored health care plan.

3. DOD has been given a 2-year period to contract with one or more private insurance companies to provide, at a lower than individual rate, and with a waiver of preexisting conditions, a conversion policy. Such a policy would be made available to all individuals who lose their entitlement to care in the military health system (for example, former spouses, military personnel and family members leaving active service, nonstudent dependent child over 21 years old, etc).

4. All benefits will be terminated upon remarriage. Medical benefits will not be extended if former spouse participates in an employer sponsored medical care plan.

5. Points of contacts, this headquarters, are Major Ron Mulke and Mrs. Sharon Blackwell, Autovon 221-9591/9592; commercial (202) 325-9591/9592.

OTJAG Legal Assistance Items

Legal Assistance Legislation

Lieutenant Colonel Richard S. Arkow, Chief, Legal Assistance Division, Office of The Judge Advocate General, provided the following information concerning the new legal assistance statute, recently enacted as part of the Department of Defense Authorization Act of 1985, Pub. L. No. 98-525. Provisions of the Act concerning legal assistance may be found at Title VI, part F, § 651. The law will be codified at 10 U.S.C. § 1044. It is reprinted here in its entirety:

Section 1044. Legal Assistance

(a) Subject to the availability of legal

staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs to—

(1) members of the armed forces under his jurisdiction who are on active duty;

(2) members and former members under his jurisdiction entitled to retired or retainer pay or equivalent pay; and

(3) dependents of members and former members described in clauses (1) and (2).

(b) Under such regulations as may be prescribed by the Secretary concerned, the Judge Advocate General (as defined in section 301(1) of this title) under the jurisdiction of the Secretary is responsible for the establishment and supervision of legal assistance programs under this section.

(c) This section does not authorize legal counsel to be provided to represent a member or former member of the armed forces, or the dependent of a member or former member, in a legal proceeding if the member or former member can afford legal fees for such representation without undue hardship.

(d) The Secretary concerned shall define "dependent" for the purposes of this section.

The ever increasing awareness by Congress that personal legal difficulties can contribute to a state of low morale and inefficiency in the military and that prompt assistance in resolving these difficulties is necessary to enhance the readiness of our soldiers led to the passage of this law. The statutory recognition of the Army's Legal Assistance Program should lead to greater awareness of the importance of legal assistance in today's Army.

Legal Assistance Operations Report

The results of the August test report have been collated and analyzed. A total of 398 attorneys, including 136 providing full-time legal assistance, served 48,290 clients and devoted 7574 hours to helping our clients. Domestic relations matters accounted for 25% of our time. The other busy areas were wills—16%,

personal finance—12%, taxes—7%, miscellaneous—20%. The last annual legal assistance report was in FY 80. At that time we had approximately the same number of full-time attorneys and served about the same number of clients. As a result of your suggestions and comments, we are revising the format of the report to make it easier to complete and to provide more meaningful information to evaluate and improve the Army's Legal Assistance Program. Ideas on how to continue our progress are welcome and should be submitted to the Legal Assistance Office, Office of The Judge Advocate General, U.S. Army, Washington, DC 20310-2201.

Improper Will Executions

It was recently discovered that a large number of wills in USAREUR were improperly executed. A JAGC officer prepared a three-page will for a soldier in USAREUR. The will consisted of two pages with signature blocks for the testator and three witnesses; the third page was the self-proving clause. The self-proving clause was properly signed by the testator and the three witnesses. Each page of the will was also initialed by the witnesses. The will itself, however, was signed by the testator but not by the witnesses. Wills were executed in this manner from 1980 to 1983 at Augsburg, Kelly Barracks, Heilbronn and North Stuttgart, Federal Republic of Germany.

The testator died in USAREUR and the will was presented for probate in Texas, the testator's domicile. Because the will was not signed by the witnesses, it was denied probate. Under Texas law, the will itself had to be signed by the witnesses and the signatures of the witnesses on the self-proving clause alone were not enough.

The spouse, the principal beneficiary under the will, has presented a \$43,668 administrative claim against the Army based on the alleged malpractice of the JAGC officer in failing to properly supervise the execution of the will. That claim is still pending.

Although an effort has been made by VII Corps to locate all clients whose wills might be defective, the results of that effort have not

been entirely successful. A news release has been prepared for the Army News Service and its 440 newspaper network setting forth the problem and recommending that individuals who executed wills during this period see the local legal assistance officer. Staff judge advocates and legal assistance officers should be alert for the notice in local papers and be prepared to review any wills from USAREUR based on the above information.

The Texas court's position may be an aberration and unduly formalistic. Regardless, SJAs and legal assistance officers should be aware of the problem and the need to insure proper supervision of the will-execution process. The current All States Will Guide gives statutory citations to insure correct preparation of each will. In addition, basic course instruction at TJAGSA includes specific instruction on will execution and each student participates in a practical exercise in will drafting and execution.

Landlord/Tenant—Discrimination

Discrimination in housing is not new. Despite efforts to eliminate discrimination, it continues to be a problem. Legal assistance officers should be alert to discrimination, and to the often disguised manner in which it may arise. The

following case *Betsey v. Turtle Creek Associates*, 736 F.2d 983 (4th Cir. 1984) is an example.

Tenants of a building in Silver Spring, Maryland, were given eviction notices when the apartment complex changed its building policy to permit occupancy only by adults. The result of this all-adult policy was to evict tenants who had children. The tenants brought an action under the Fair Housing Act alleging that the defendant had a discriminatory intent when it implemented this policy and that the policy had a disproportionate adverse impact on minorities. The figures showed that as a result of the policy 54.3% of the non-white tenants in the building received eviction notices as opposed to only 14.1% of the white tenants. The District court determined that the plaintiffs had failed to make a sufficient showing of a disproportionate adverse impact because there had been no showing that the policy had an impact on blacks in the community as a whole. On appeal, the appellate court ruled that the plaintiffs need only show that the policy had a disproportionate adverse impact on the individual plaintiffs concerned and not on the community of minorities as a whole. The court determined that the facts presented showed that the policy would have a disproportionate impact on the black tenants in the building and thus remanded the case.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

New Title for Reserve Affairs

Effective 1 January 1985, the office title of the Reserve Affairs Department, TJAGSA, will be changed to "Judge Advocate Guard and Reserve Affairs Department." This change more accurately reflects the role the department plays in the training and personnel management of both ARNG and USAR judge advocates. Correspondence to the department should be addressed to The Judge Advocate General's School, U.S. Army, ATTN: JAGS-GRA, Charlottesville, Virginia 22903-1781.

Dates for Reserve Component Training Announced

Judge Advocate Triennial Training (JATT)

Judge Advocate Triennial Training (JATT—previously JAGSO Triennial Training) for international law/claims and contract law teams will be conducted at The Judge Advocate General's School from 17-28 Jun 85. Inprocessing will take place on Sunday, 16 Jun 85. Attendance is limited to commissioned officers; alternate AT should be scheduled for warrant officers and

enlisted members. The 1036th U.S. Army Reserve School, Farrell, PA, will host the training; orders should reflect assignment to the 1036th USAR School with duty station at TJAGSA. Units must forward a tentative list of members attending this AT to The Judge Advocate General's School, ATTN: JAGS-GRA (Mrs. Park), Charlottesville, VA 22903-1781, as soon as possible. Final lists of attendees must be furnished by 15 Apr 85. Commanders are welcome to observe the training but must coordinate their visits in advance with either Mrs. Park or Captain McShane of the Reserve Affairs Department at (FTS) 938-1301 or (804) 293-6121. ARNG judge advocates are invited to attend this training and may obtain course quotas through channels from the ARNG Military Education Branch, ARNG Operating Activity Center, Aberdeen Proving Grounds, MD, 21010.

JATT is mandatory for all JAGSO international law/claims and contract law teams. Individuals belonging to these units may be excused only by their CONUS staff judge advocate, with the concurrent of the Director, Reserve Affairs Department, TJAGSA. Due to administrative problems in past years, units will be required to explain any "no-shows," and unregistered students who report to TJAGSA will be sent home. Students must comply with Army height/weight and Army Physical Readiness Test (APRT) standards while at TJAGSA.

Judge Advocate Officer Advanced Course (JAOAC), Phase VI

The Judge Advocate Officer Advanced Course (JAOAC), Phase VI, will be offered at TJAGSA from 17-28 Jun 85. This course, run in conjunction with JATT, is also administered by the 1036th USAR School. The same policies with regard to "no-shows" and unregistered students will be in effect. JOAC students must also meet Army height/weight and APRT standards while at TJAGSA. Course quotas are available through channels from the ARNG Military Education Branch for ARNG personnel, or through channels from the JAGC Personnel Management Officer, U.S. Army Reserve Personnel Center, ATTN: DARP-OPS-JA (MAJ Hamilton), 9700 Page Boulevard, St. Louis, MO 63132 for USAR personnel. Requests for quotas must be received at NGB or ARPERCEN by 15 Apr 85.

1985 JAG Reserve Workshop

The 1985 JAG Reserve Workshop will be held at The Judge Advocate General's School in Charlottesville, Virginia, during the period 2-5 April 1985. Attendance is by invitation only; attendees can expect to receive their invitation packets by the beginning of February 1985. It is imperative that invitees notify TJAGSA of their intention to attend by 8 March 1985.

Enlisted Update

Sergeant Major Walt Cybart



First Sergeant Positions

In the September 1984 issue of *The Army Lawyer* I reported that the Corps obtained a first sergeant position at Fort Benjamin Harrison. Recently, I learned that the Corps also has a first sergeant position at the US Army Claims Service, Korea, and that we may obtain an additional first sergeant post at Fort Benjamin Harrison in the near future.

Selection for Promotion to Master Sergeant

The recently released master sergeant selec-

tion list contained thirteen 71Ds and one 71E—a remarkable selection considering our over-strength posture in this grade. It should be highlighted that the profile analysis reveals that nine of these soldiers scored between 90 and 100 on their SQT. A check with the promotions branch at MILPERCEN confirmed that the 1983 SQT scores were evaluated by the promotion board. It should be clear by now that *SQT COUNTS*.

Listed below are a few observations regarding the overall promotion board process provided by SGM Bill Crouch, Fort Sill, Oklahoma, the JAG Corps representative on this board.

—Compared with CMF 97, 74, 79, and 71 (minus 71L), 71D records were among the best; most were up-to-date and in great shape.

—An enlisted efficiency report tends to carry more weight when an NCO is in the rating chain.

—A few files indicated that NCOs were overweight. In some cases, NCOs "grew" up to three inches from their last recorded height/weight. Even though eligibles signed a statement on their Personnel Qualification Record attesting to their height/weight, this data did not necessarily agree with the data on recent Senior Enlisted Evaluation Reports, the DA Form

2A, or the photograph; also, a few were listed as overweight with no explanation on their Senior Enlisted Evaluation Report.

—Some photos were not up-to-date.

—Several NCOs did not show up for their records review.

—Letters to the president of the promotion board are very carefully reviewed and can be helpful.

Appointment as a Legal Administrator

If any of our NCOs are considering applying for appointment as a JAG warrant, now is the time. Several positions will become available during FY 85; after that, selections may slow down drastically. Qualifications for becoming a JAG warrant are contained in AR 135-100 and DA Cir 601-XX (soon to be released). See your nearest legal administrator for assistance.

CLE News

1. Resident Course Quotas

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. **If you have not received a welcome letter or packet, you do not have a quota.** Quota allocations are obtained from local training offices which receive them from the MACOMs. Reservists obtain quotas through their unit or ARPERCEN, ATTN: DARP-OPS-JA, 9700 Page Boulevard, St. Louis, MO 63132, if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. To verify a quota, you must contact the Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22903-1781 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

2. TJAGSA CLE Course Schedule

January 7-11: 1985 Government Contract Law Symposium (5F-F11).

January 14-18: 26th Federal Labor Relations Course (5F-F22).

January 21-25: 14th Criminal Trial Advocacy Course (5F-F32).

January 21-March 29: 106th Basic Course (5-27-C20).

February 4-8: 77th Senior Officer Legal Orientation Course (5F-F1).

February 11-15: 5th Commercial Activities Program Course (5F-F16).

February 25-March 8: 102nd Contract Attorneys Course (5F-F10).

March 4-8: 29th Law of War Workshop (5F-F42).

March 11-15: 9th Administrative Law for Military Installations (5F-F24).

March 11-13: 3d Advanced Law of War Seminar (5F-F45).

March 18-22: 1st Administration and Law for Legal Clerks (512-71D/20/30).

March 25-29: 16th Legal Assistance Course (5F-F23).

April 2-5: JAG USAR Workshop.

April 8-12: 4th Contract Claims, Litigation, & Remedies Course (5F-F13).

April 8-June 14: 107th Basic Course (5-27-C20).

April 15-19: 78th Senior Officer Legal Orientation Course (5F-F1).

April 22-26: 15th Staff Judge Advocate Course (5F-F52).

April 29-May 10: 103d Contract Attorneys Course (5F-F10).

May 6-10: 2nd Judge Advocate Operations Overseas (5F-F46).

May 13-17: 27th Federal Labor Relations Course (5F-F22).

May 20-24: 20th Fiscal Law Course (5F-F12).

May 28-June 14: 28th Military Judge Course (5F-F33).

June 3-7: 79th Senior Officer Legal Orientation Course (5F-F1).

June 11-14: Chief Legal Clerks Workshop (512-71D/71E/40/50).

June 17-28: JATT.

June 17-28: JAOAC: Phase VI.

July 8-12: 14th Law Office Management Course (7A-713A).

July 15-17: Professional Recruiting Training Seminar.

July 15-19: 30th Law of War Workshop (5F-F42).

July 22-26: U.S. Army Claims Service Training Seminar.

July 29-August 9: 104th Contract Attorneys Course (5F-F10).

August 5-May 21 1986: 34th Graduate Course (5-27-C22).

August 19-23: 9th Criminal Law New Developments Course (5F-F35).

August 26-30: 80th Senior Officer Legal Orientation Course (5F-F1).

3. Civilian Sponsored CLE Courses

March 1985

1: IICLE, Advising Financial Institutions, Chicago, IL.

1: PBI, Computer Literacy (Video), Mercer, PA.

1-3: UMLC, Medical Institute for Attorneys, Miami Beach, FL.

3-9: ATLA, Basic Trial Advocacy, San Diego, CA.

4-8: ALIABA, Planning Techniques for Large Estates, Honolulu, HI.

5: PBI, Computer Literacy (Video), York, PA.

6: IICLE, How to Take Depositions in Personal Injury Cases, Chicago, IL.

6-9: UMLC, Medical Institute for Attorneys, Miami, FL.

7: IICLE, Proof of Damages, Springfield, IL.

8: IICLE, Proof of Damages, Chicago, IL.

8-9: SBT, Marriage Dissolution Course, Fort Worth, TX.

9: SBT, Saturday Morning in Court, San Antonio, TX.

10-13: NCJJ, Annual Conference on Juvenile Justice, Philadelphia, PA.

15: IICLE, Illinois School Law (Program A), Chicago, IL.

15-16: ICLE, Legal Issues for Bank Counsel, Lexington, KY.

18: IICLE, Illinois School Law (Program B), Chicago, IL.

21: IICLE, Illinois Competitive Business Practice, Chicago, IL.

21-22: PLI, Hazardous Waste Litigation, Chicago, IL.

21-22: PLI, Pre-Indictment Advocacy, New York, NY.

22: PBI, Computer Literacy (Video), Wilkes-Barre, PA.

22: IICLE, Public Presentations, Chicago, IL.

25-30: ATLA, Basic Trial, Little Rock, AR.

26: IICLE, Financing Real Estate Transactions, Chicago, IL.

27: IICLE, Mediation & Arbitration Under the 7th Circuit Rule, Chicago, IL.

28: IICLE, Enforcement of Child Support, Springfield, IL.

29: IICLE, Enforcement of Child Support, Chicago, IL.

For further information on civilian courses, please contact the institution offering the course. The addresses are listed in the October 1984 issue of *The Army Lawyer*.

Current Material of Interest

1. DTIC Price Change

On 1 January 1985, DTIC will begin using a variable pricing system for hard copies of technical reports, including TJAGSA materials. The new rate for hard copies will be five dollars for reports with 1-100 pages, and seven cents for each additional page over 100 pages. The microfiche rate of ninety-five cents per copy will not change.

2. TJAGSA Materials Available Through Defense Technical Information Center

Each year TJAGSA publishes deskbooks and materials to support resident instruction. Much of this material is useful to judge advocates and government civilian attorneys who are not able to attend courses in their practice areas. The School receives many requests each year for these materials. Because such distribution is not within the School's mission, TJAGSA does not have the resources to provide these publications.

In order to provide another avenue of availability, some of this material is being made available through the Defense Technical Information Center (DTIC). There are two ways an office may obtain this material. The first is to get it through a user library on the installation. Most technical and school libraries are DTIC "users." If they are "school" libraries, they may be free users. Other government agency users pay five dollars per hard copy for reports of 1-100 pages and seven cents for each additional page over 100, or ninety-five cents per

fiche copy. The second way is for the office or organization to become a government user. The necessary information and forms to become registered as a user may be requested from: Defense Technical Information Center, Cameron Station, Alexandria, VA 22314.

Once registered, an office or other organization may open a deposit account with the National Technical Information Center to facilitate ordering materials. Information concerning this procedure will be provided when a request for user status is submitted.

Users are provided biweekly and cumulative indices. These indices are classified as a single confidential document and mailed only to those DTIC users whose organizations have a facility clearance. This will not affect the ability of organizations to become DTIC users, nor will it affect the ordering of TJAGSA publications through DTIC. All TJAGSA publications are unclassified and the relevant ordering information, such as DTIC numbers and titles, will be published in *The Army Lawyer*.

The following TJAGSA publications are available through DTIC: (The nine character identifier beginning with the letters AD are numbers assigned by DTIC and must be used when ordering publications.)

AD NUMBER	TITLE
AD B086941	Criminal Law, Procedure, Pre-trial Process/JAGS-ADC-83-7 (150 pgs).

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|------------|---|------------|--|
| AD B086940 | Criminal Law, Procedure, Trial/JAGS-ADC-83-8 (100 pgs). | | Laws & Procedures/JAGS-ADA-84-1 (266 pgs). |
| AD B086939 | Criminal Law, Procedure, Post-trial/JAGS-ADC-83-9 (80 pgs). | AD B077739 | All States Consumer Law Guide/JAGS-ADA-83-1 (379 pgs). |
| AD B086938 | Criminal Law, Crimes & Defenses/JAGS-ADC-83-10 (180 pgs). | AD B079729 | LAO Federal Income Tax Supplement/JAGS-ADA-84-2 (188 pgs). |
| AD B086937 | Criminal Law, Evidence/JAGS-ADC-83-11 (90 pgs). | AD B077738 | All States Will Guide/JAGS-ADA-83-2 (202 pgs). |
| AD B086936 | Criminal Law, Constitutional Evidence/JAGS-ADC-83-12 (200 pgs). | AD B078095 | Fiscal Law Deskbook/JAGS-ADK-83-1 (23 pgs). |
| AD B086935 | Criminal Law, Index/JAGS-ADC-83-13 (75 pgs). | AD B080900 | All States Marriage & Divorce Guide/JAGS-ADA-84-3 (208 pgs). |
| AD B078119 | Contract Law, Contract Law Deskbook/JAGS-ADK-83-2 (360 pgs). | AD B086999 | Operational Law Handbook/JAGS-DD-84-1 (55 pgs). |
| AD B079015 | Administrative and Civil Law, All States Guide to Garnishment | | |

Those ordering publications are reminded that they are for government use only.

3. Regulations & Pamphlets

Number	Title	Change	Date
AR 60-20	AAFES Operating Policies		1 Aug 84
AR 190-40	Serious Incident Report	I02	10 Sep 84
AR 600-20	Army Command Policy & Procedures	I04	14 Sep 84
AR 600-85	Alcohol & Drug Abuse Prevention and Control Program	I07	10 Sep 84
AR 608-1	Army Community Service Program	I04	10 Oct 84
AR 608-8	Mortgage Insurance for Service Members		5 Oct 84
UPDATE 2	All Ranks Personnel		1 Oct 84
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DA Pam 550-56	Area Handbook—Kenya		1983
DA Pam 550-151	Area Handbook—Honduras		1983

4. Articles

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- Hsiao, *The Legal Status of Taiwan in the Normalization of Sino-American Relations*, 14 Rutgers L.J. 839 (1983).
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- Morse, *Undiminished Confusion in Diminished Capacity*, 75 J. Crim. L. & Criminology 1 (1984).
- Perez, *The Weingarten Right and Its Progeny: How Much Weingarten Should Employers Be Required to Take?*, 7 Corp. L. Rev. 323 (1984).
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- Comment, *Other-Than-Honorable Military Administrative Discharges: Time for Confrontation*, 21 San Diego L. Rev. 839 (1984).
- Comment, *Should "Good Faith" Be an Element of the Inevitable Discovery Exception to the Exclusionary Rule*, 17 Creighton L. Rev. 1123 (1983-1984).
- Note, *"Beyond Judicial Scrutiny": Military Compliance with NEPA*, 18 Ga. L. Rev. 639 (1984).
- American Courts, International Law, and the Law in Vietnam*, 18 Colum. J.L. & Soc. Probs. 295 (1984).
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By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Major General, United States Army
The Adjutant General

